

COMPTROLLER GENERAL OF THE UNITED STATES
Washington

B-76028

January 31, 1952

Administrator

Defense Materials Procurement Agency

My dear Mr. Administrator:

Reference is made to your letter dated December 14, 1951, requesting to be advised as to whether funds available for salaries and expenses of the Defense Materials Procurement Agency now carried in separate appropriation accounts properly may be transferred and merged in one such account in order to simplify accounting and reporting operations.

The Defense Materials Procurement Agency was created by Executive Order No. 10281 dated August 28, 1951, to perform the functions authorized by section 303 of the Defense Production Act of 1950, Public Law 774, 81st Congress, approved September 8, 1950, as amended, and theretofore administered by other agencies of the Government with funds made available for carrying out said act. The order also authorized the transfer of the personnel, records, property, and unexpended balances of appropriations, allocations, and other funds applicable to the functions transferred to the Defense Materials Procurement Agency.

It is stated in your letter that the involved fund transfers authorized by the Director of the Bureau of Budget pursuant to the authorities contained in section 501 of the above cited Executive Order, section 711 of the Defense Production Act of 1950, as amended, and section 202(b) of the Budget and Accounting Procedures Act of 1950, Public Law 784, approved September 12, 1950, included the unexpended balance in the account "Revolving Fund, Defense Production Act, General Services Administration," which was transferred to the account "Revolving Fund, Defense Production Act, Defense Materials Procurement Agency;" also \$115,000 from the appropriation "Emergency Operating Expenses, General Services Administration, 1952" and \$400,000 from the appropriation "Salaries and Expenses, Defense Production Act, Interior, 1952" which amounts were transferred to and merged in a single new account "Salaries and Expenses, Defense Materials Procurement Agency, 1952."

The letter points out that funds in both the newly established accounts are available for salaries and administrative expenses and advises that the amounts apportioned therefrom for salaries and expenses are limited to an annual basis. While it is stated that it is intended to request a single source of funds from the Congress for the fiscal year 1953, it is suggested that legislative authority for the present proposed transfer and merger of the current funds in the revolving fund account is contained in section 711 of the Defense Production Act of 1950, 64 Stat. 798, 820, and section 202(b) of the Budget and Accounting Procedures Act of 1950, 64 Stat. 832, 838,

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which provide, respectively, as follows:

"Sec. 711. There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act by the President and such agencies as he may designate or create. Funds made available for the purposes of this Act may be allocated or transferred for any of the purposes of this Act, with the approval of the Bureau of the Budget, to any agency designated to assist in carrying out this Act. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available." (Underscoring added.)

"Sec. 202(b). When under authority of law a function or activity is transferred or assigned from one department or establishment to another department or establishment, the balance of appropriations which are determined by the President to be available and necessary to finance or discharge the function or activity so transferred or assigned, shall be transferred to and be available for use by the department or establishment to which said function or activity is transferred or assigned for any purpose for which said funds were originally available. Balances so transferred shall be credited to any applicable existing appropriation account or accounts, or to any new appropriation account or accounts, which are hereby authorized to be established, and shall be merged with funds in the applicable existing or newly established appropriation account or accounts and thereafter accounted for as one fund."

It is the general rule that in the absence of statutory authority therefor, funds appropriated for the service of a fiscal year may not be commingled or merged with those made available until expended. The basis for this rule, of course, is that the terms and conditions of and restrictions upon appropriations legally can be changed only by the Congress and not by the accounting and administrative officers of the Government.

While the above-quoted language of section 202(b) contains authority to merge funds transferred thereunder with similar funds in otherwise proper cases, the specific provisions in section 711, supra, restricting the availability of funds allocated or transferred in carrying out the Defense Production Act of 1950, as amended, to the period specified in the acts making the funds available, precludes the merger of such of the funds as are appropriated specifically for the service of a fiscal year with those made available until expended.

In the light of the foregoing, I must advise that there is no existing authority of law for the transfer of funds, as proposed.

Sincerely yours,

(Signed) LINDSAY C. WARREN

Comptroller General
of the United States